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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s): Grooms *et al.*

Application No.: 09/905,683

Filed: 7/16/2001

Title: Cortical Bone Cervical Smith-
Robinson Fusion Implant

Attorney Docket No.: TB-104IACA

Group Art Unit:
3732

Assistant Commissioner for Patents
Washington, D.C. 20231

Sir:

PETITION TO MAKE APPLICATION UNDER 37 CFR § 1.47(a)

Enclosed herewith is a Declaration/Power of Attorney signed by all inventors except Mr. Kevin Carter (now deceased). Ms. Diane Carter, has been named administrator of Mr. Kevin Carter's estate. After several verbal and written requests, Ms. Carter has constructively refused to sign the relevant Declaration for this case. Accordingly, the signing inventors hereby Petition that the subject application be made on behalf of themselves and on behalf of the nonsigning legal representative of Mr. Kevin Carter, Ms. Diane Carter.

Statement of Facts

Mr. Kevin Carter co-invented the subject matter claimed in the above-captioned application during the course of his employment with Regeneration Technologies, Inc. (RTI). Under Mr. Carter's employment agreement with RTI, he was under an obligation to assign all rights in the invention to RTI. Incidentally, all inventors in the above-captioned application are under an obligation to assign their rights in the invention to RTI.

The undersigned has conducted telephonic communication on several occasions with Ms. Carter directly and through her attorneys. The undersigned initially spoke to Ms. Carter in November 2001 and explained to her that formal documentation relating to the subject case needed her signature as Administrator of Mr. Kevin Carter's estate. The undersigned also explained that such documentation was required to be filed with the U.S. Patent Trademark Office. Ms. Carter stated that she was represented by counsel, so the undersigned tried to coordinate execution of necessary documents through her counsel at the time. These efforts were unsuccessful due to a lack of responsiveness by Ms. Carter or her counsel.

PETITION UNDER 37 CFR § 1.47(A)

On January 4, the undersigned received a phone call from Ms. Carter, wherein she expressed that she was terminating representation by her then current counsel, and that she was seeking new counsel. She indicated that her new counsel would be contacting the undersigned to coordinate the execution of documents.

As the undersigned did not hear from Ms. Carter after two weeks, the undersigned sent copies of all relevant documents to Ms. Carter on January 17, 2002. This letter kindly requested return of the executed documents by January 22, 2002. This quick turnaround was requested in view of rapidly approaching deadlines and/or extension of time fees that have already been incurred.

On February 11, 2002, the undersigned sent a letter to Ms. Diane Carter (see attached) informing her that unless she immediately return the executed documentation for this and other cases naming Mr. Kevin Carter as an inventor, the undersigned would file a Petition requesting that the Patent Office make the application without her signature on the Declaration. As of the date of this Petition, Ms. Carter has not returned the executed documents. The signing Applicants consider Ms. Carter's lack of action as a constructive refusal to sign the necessary Declaration for the subject application.

Relief Requested

A Notice to File Missing Parts in the above-captioned application was issued on December 10, 2001. This Notice set a deadline of February 10, 2002 for timely submission of an executed inventor Declaration. Since the undersigned had not received the executed Declaration from Ms. Diane Carter, the Applicants could not comply with the requirements set forth in the December 10, 2001 Notice. As a result, an extension of time fee was incurred by the Applicants.

Applicants request that the above-captioned application be made on behalf of the signing inventors themselves and on behalf of the sole nonsigning inventor. A Declaration is submitted herewith containing signatures by all of the inventors except Ms. Carter. Grant of this Petition is requested to avoid unnecessary extension of the fees and/or abandonment of the subject application.

Pursuant to the requirements of 37 CFR 1.47(a), Ms. Diane Carter's last known address, and the address of her attorney, is as follows:

Ms. Diane Carter
8502 NW 35th Road
Gainesville, FL 32606


Mr. Larry Ciesla
P.O. Box 1161
Gainesville, FL 32602

Furthermore the necessary fee under 1.17(h) is provided herewith (see attached Form PTO-2038). Should the Patent Office have any questions or require further information with respect to this matter, Applicants request that the undersigned be contacted immediately.

PETITION UNDER 37 CFR § 1.47(A)

Respectfully submitted,

3-11-2002
Date


Timothy H. Van Dyke, Reg. No. 43218


Customer No: 29847

Van Dyke & Associates, P.A.
1630 Hillcrest Street
Orlando, FL 32803
Phone: 407-228-0328; Fax: 407-228-0329

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope with sufficient postage addressed to: Assistant Commissioner for Patents, Washington, D.C. 20231.

Date of Deposit: 3-11-2002

Typed Name: Timothy H. Van Dyke

Signature: 

1630 Hillcrest Street
Orlando, Florida 32803
USA



Van Dyke & Associates, PA

INTELLECTUAL PROPERTY LAW

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TO	:	Ms. Diane Carter – c/o Mr. Larry Ciesla
FAX No.	:	352-375-6249
No of PAGES	:	2 (including cover sheet)
FROM	:	Van Dyke & Associates, P.A.
DATE	:	February 11, 2002
RE:	:	The attached letter

MAIL CONFIRMATION TO FOLLOW

Please see the attached letter. Thank you.

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February 11, 2002

Ms. Diane Carter
c/o Mr. Larry Ciesla
P.O. Box 1161
Gainesville, FL 32602

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VIA FACSIMILE &
MAIL CONFIRMATION

Re: Formal Filing Documents for our Docket Nos:
TB-104IACA; RTI-118IB; RTI-118IC, RTI-112RIA & RTI-D1

Dear Ms. Carter:

You are in possession of several patent related documents (declaration/power of attorney and assignments forms) for which your signature is needed as the administrator of Mr. Kevin Carter's estate. As far back as November 2001, I have been communicating with you through your attorneys to explain the purpose of these documents. You have also been told that deadlines exist by which these forms must be submitted to the U.S. Patent and Trademark Office. To date, none of the executed forms have been returned to our office.

My client, Regeneration Technologies, Inc., has incurred attorney's fees and time extension fees to keep some of the underlying patent applications pending. Unless the subject forms are filed in the Patent Office, more fees will be incurred, or worse, the applications may go abandoned. As each day passes, the urgency to file the forms increases. Therefore, unless we are faxed (followed by mail) the documents that we sent to you on January 17, 2002 and January 22, 2002 regarding our Docket Nos. TB-104IACA; RTI-118IB; RTI-118IC, RTI-112RIA & RTI-D1 by **Wednesday, February 13, 2002**, we will proceed to file the necessary documents without your signature. Concurrently, we will file a Petition under 37 CFR 1.47 requesting that the Patent Office accept these documents without your signature given your unwillingness to execute them.

In view of Mr. Kevin Carter's clear obligation to assign his rights to any invention he invented in the scope of his employment with RTI, I was hoping that you would recognize this obligation, and be cooperative in executing the necessary forms. I still hope that we can cooperate, as ultimately it serves both your and RTI's interests.

Sincerely,

Timothy H. Van Dyke
Patent Counsel for Regeneration Technologies, Inc.
TVD/mkk

HP LASERJET 3150
PRINTER/FAX/COPIER/SCANNER

SEND CONFIRMATION REPORT FOR
VAN DYKE & ASSOCIATES, P.A.
407 228 0329
FEB-11-02 3:02PM

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